

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 101 of 2003.

Judgement reserved on: 3.5.2007

Date of decision: 11.6.2007.

National Insurance Company Ltd. Appellant.

Vs.

Smt. Gayatri Devi & ors. Respondents.

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The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Ashwani K. Sharma, Advocate.

For the Respondents : Mr. Rakesh Sharma, Advocate, for
respondent No. 2.

Mr. Ashwani Pathak, Advocate, for
respondent No.3.

Kuldip Singh, Judge.

The National Insurance Company is in appeal against the award, dated 11.10.2002, passed by learned Motor Accident Claims Tribunal (I), Kangra at Dharamshala, in MACP No. 67-K/II/99, awarding Rs. 25,000/- compensation in favour of the petitioner Smt. Gaytri Devi, and against respondents jointly and severally alongwith interest at the rate of 9% per annum, from the date of the petition till the date of the payment, insurance company – respondent No.3 has been ordered to pay the compensation amount. The amount awarded is inclusive of amount payable, under Section 140 of Motor

Whether the reporters of the local papers may be allowed to see the Judgment?

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Vehicles Act, 1988 (for short, the Act). The parties are referred in this judgement in the same manner as in the impugned award.

2. The facts in brief are that petitioner Smt. Gaytri Devi filed claim petition, under Section 166 of the Act, claiming Rs. 5,00,000/- compensation for the injuries sustained by her in an accident while travelling in jeep No. HP-39-9783 owned by respondent No. 1 Rajesh Kumar and was being driven by respondent No.2 Kuljeet Singh at the time of the accident. The jeep was insured with respondent No.3 National Insurance Company Limited.

3. The further case of the petitioner is that on 11.4.1999, she was waiting for a bus at Shila Chowk, for going to her village Rajol. In the meantime, jeep No. HP-39-9739, came there, which was being driven by respondent No.2. The driver of the jeep asked the passengers waiting for the bus to board the jeep, therefore, the petitioner boarded the jeep. The jeep turned turtle near IPH Store Bhated due to rash and negligent driving of the driver and the petitioner sustained injuries in the accident. She was taken to hospital and remained admitted in the hospital from 11.4.1999 to 7.5.1999 and during that period her leg and forearm were plastered and she was operated and a rod was inserted in her leg and she remained bed ridden for three months. The petitioner had incurred Rs. 50,000/-, on her treatment. She suffered 5% disability, which prevented her from earning Rs. 3,000/-, per month.

4. The insurer filed an application, under Order 1, Rule 10 of the Code of Civil Procedure, for impleading Khem Raj, as respondent on the ground that he was driving the jeep at the time of

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the accident. The Tribunal on 27.11.2001, allowed the application and impleaded Khem Raj, as respondent. The petitioner filed the amended petition.

5. Respondents No. 1 and 2 in their joint reply stated that claim made by the petitioner is excessive. The petitioner is not entitled to any compensation.

6. Respondent No. 3 insurer filed a separate reply and denied the accident and injuries sustained by the petitioner. It has been denied that petitioner is entitled to any compensation. The insurer pleaded that respondent No.2 had no valid driving licence to drive the vehicle and the vehicle was not insured. The petition has been filed in collusion with respondents No. 1 and 2. Respondent No. 4 filed reply and submitted that he was not driving the jeep No. HP-39-9783, as alleged. He was falsely implicated in the police case in which he has been acquitted. The Tribunal framed the following issues:-

1. Whether the petitioner suffered injuries as a result of rash or negligent driving of respondent No.2? OPP.
2. In case issue No.1 is proved to what amount of compensation the petitioner is entitled to and from which of the respondents? OP. Parties.
3. Whether the respondent No.2 was not having valid and effective driving licence as alleged? If so, its effect? OPR-3.
- 3-A. Whether respondent No.4 was driver of the vehicle, as alleged? If so its effect? OPR-3.
4. Relief.

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7. The Tribunal in issue No.1, has held that the accident had taken place due to rash and negligent driving of respondent No.2 driver. In issue No. 2, the Tribunal has held the entitlement of petitioner to compensation, as noticed above. Issue No. 3, has been decided against the insurer for want of evidence. In issue No. 3-A, it has been held that respondent No.3 has failed to prove that jeep was being driven by respondent No.4 Khem Raj at the time of the accident. The Tribunal ultimately passed the impugned award and the insurer is in appeal in this court.

8. I have heard the learned counsel for the parties and have also gone through the record.

9. The learned counsel for the appellant- respondent No. 3 has submitted that petitioner-claimant was unauthorized passenger in the jeep, which was a goods vehicle. The jeep was not authorized to carry the passengers and the insurance company, as per policy, is not liable to indemnify the risk. The learned counsel for respondents No. 2 and 3 have supported the impugned award. They have submitted that insurance company has been rightly held liable to pay the compensation.

10. PW 1 Dr. Vaneet Aggarwal has stated that Smt. Gaytri Devi remained admitted in Female Orthopaedic Ward from 11.4.1999 to 7.5.1999. She has suffered permanent disability of 5%. He has proved her disability certificate Ex. PB. PW 2 HC Kehar Singh has proved FIR NO. 98/99 Ex. PC registered on 11.4.1999, under Sections 279, 337, 304-A, IPC PW 3 Gaytri Devi has stated that she boarded the jeep No. HP-39-9783 on 11.4.1999 at Shila Chowk. The

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jeep turned turtle near Pump House due to negligence of the driver and she sustained several injuries including fractures. She was earning Rs. 3,000/- per month, before the accident. She remained admitted in the hospital at Dharamshala. She was operated upon and rod was inserted in her leg. She was disfigured due to accident.

11. RW 1 Kuljeet Singh has stated that in 1999, he was driver on vehicle No. HP-39-9783 owned by Rajesh Kumar. He was having a valid driving licence Ex. R-1. He proved insurance policy Ex. R-2 of the vehicle. RW 2 Khem Raj has stated that he was never driver on jeep No. HP-39-9783 nor he had driven this jeep on 11.4.1999. He had valid driving licence from 7.1.1999 to 6.1.2002, a copy Ex. R-3.

12. The point involved in the appeal is very short to the effect whether in view of insurance policy Ex. R-2, the insurance company is liable to pay the compensation. The perusal of insurance policy Ex. R-2 would show that the jeep in question was a goods vehicle. It is not the case of the petitioner that she was sitting in the jeep as owner of the goods. The insurance company is not liable to pay compensation to the petitioner on account of injuries sustained by her in the accident while she was travelling in the jeep as passenger and not as owner of the goods. In **National Insurance Co. Ltd. vs. Baljit Kaur and ors.** [2004 (2) SCC 1], the Hon'ble Supreme Court, in para-20, of the judgement, has held as follows:-

“It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to person other than the owner of the goods or his authorized representative remains the same. Although the

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owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people.”

It is not the case of the petitioner that jeep No. HP-39-9739 was not a goods vehicle under the Act. Smt. Gaytri Devi was sitting in jeep as passenger and not as owner of goods. Therefore, she is not entitled to claim compensation from the insurer on account of injuries sustained by her in the jeep accident. Therefore, in view of **National Insurance Company's case** (supra), the insurance company is not liable to pay the compensation to petitioner Smt. Gaytri Devi and the findings of Tribunal holding the liability of insurer to pay compensation to Smt. Gaytri Devi, are set-aside. However, liability of other respondents to pay compensation to petitioner as held by Tribunal is upheld. The appeal of insurer is accordingly allowed.

13. The insurance company in the above appeal has deposited the entire amount of compensation. In **National Insurance Company's case** (supra), the Hon'ble Supreme Court while exonerating the insurance company directed the insurance company to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle and for the purpose of recovery, it would not be necessary for the insurer to file a separate suit, but it may initiate a proceeding before the

executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer.

14. In **United India Insurance Company vs. Smt. Piari Devi and others [2005 (2) Shim. LC 456]**, while accepting the appeal of the insurance company and setting aside the award to the extent the insurance company was held liable, this Court permitted the claimant to withdraw the amount deposited by the insurance company to avoid further litigation. The insurance company was given liberty to recover the amount deposited by it alongwith interest from the owner by filing appropriate proceedings before the Motor Accident Claims Tribunal without being required to file separate suit or proceedings. The judgement in United India Insurance Company's case (supra) was ordered to be treated to be the decision of the dispute between the insurer and the insured.

15. In the present case also, the insurer has deposited the awarded amount in the above appeal. The insurer has been exonerated. In view of **National Insurance Co. Ltd. vs. Baljit Kaur and ors. [2004 (2) SCC 1]** and **United India Insurance Company vs. Smt. Piari Devi and others [2005 (2) Shim. LC 456]** (supra), the claimant Smt. Gaytri Devi is permitted to withdraw the amount deposited by the insurance company pursuant to the award. The appellant- insurance company may recover the amount deposited by it alongwith interest from respondent No. 1- owner and respondent No. 2 driver by filing appropriate execution proceedings before the Motor Accident Claims Tribunal without being required to file separate

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suit or proceedings. The present judgement shall be treated to be decision of the dispute between the insurer, insured and driver of the vehicle.

16. No other point was urged.

17. The appeal is disposed of in the above terms with no orders as to costs.

June 11, 2007.
(Hem)

(Kuldip Singh)
Judge.